

AMENDED IN SENATE JUNE 28, 2000

AMENDED IN ASSEMBLY JUNE 1, 1999

AMENDED IN ASSEMBLY APRIL 27, 1999

AMENDED IN ASSEMBLY APRIL 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 421

Introduced by Assembly Member Aroner

February 12, 1999

An act to ~~amend Section 1300 of~~ *add Sections 1301 and 1302* to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 421, as amended, Aroner. Health facilities: license suspension and revocation: emergency services.

Under existing law, a special permit may be issued by the State Department of Health Services to a health facility, in addition to a license, authorizing the facility to offer one or more of a variety of special services, including emergency services. Existing law provides that a licensee or holder of a special permit may surrender his or her license or special permit for suspension or revocation, with the approval of the department. Existing law places specified restrictions, including departmental review of the county impact evaluation, on approval of the downgrade or closure of emergency services pursuant to these provisions. Violation of the existing law provisions relating to health facilities, or

willful or repeated violation of any rule or regulation adopted thereunder, is a crime.

~~This bill would additionally provide that, notwithstanding the above provisions, if the county or its designated local emergency services agency concludes that a downgrade to standby emergency medical services, or the closure of an emergency service, would not be in the best interest of the general public, the department shall not approve a special permit for a standby emergency medical service or shall not permit the closure of the emergency service. The bill would authorize hospitals to appeal a determination that the downgrade or closure is not in the best interest of the general public to the Secretary of the California Health and Human Services Agency. The bill would declare that its provisions shall not apply to rural general acute care hospitals located in rural areas, as defined. This bill would also provide that it does not apply to certain facilities subject to closure under specified provisions of law, or if the department makes a specified finding as to a denial of a permit.~~

~~Existing law requires each county or its designated local emergency medical services agency to develop a policy specifying the criteria it will consider in conducting an impact evaluation.~~

~~This bill would require that policy to include evaluation of the economic impact on the owner of the facility.~~

This bill would authorize a county board of supervisors to conduct an assessment of certain acute care hospitals to designate each hospital as a high priority, medium priority, or low priority "essential community facility," as defined. The bill would require a county conducting an assessment under this provision to establish a county essential community facilities committee as provided under the bill. The bill would specify the duties of the committee, including the collection of information from certain hospitals, the preparation of preliminary and final reports and recommendations, and the designation of certain hospitals as high, medium, or low priority essential community facilities. The bill would require the Office of Statewide Planning and Development to provide assistance as specified in the bill.



The bill would require certain acute care hospitals to comply with a request of a county for information under the bill. Because the bill would change the definition of a crime, it would impose a state-mandated local program.

The bill would specify a procedure under which a hospital that has declared the intent to close or downgrade its emergency department and that has been designated a high priority essential community facility may seek and obtain funding from the Emergency Department Supplemental Fund, which the bill would create in the State Treasury, to increase the hospital's reimbursement under its Medi-Cal contract.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1300 of the Health and Safety~~

2 ~~SECTION 1. Section 1301 is added to the Health and~~
3 ~~Safety Code, to read:~~

4 ~~1301. (a) (1) A county board of supervisors may~~
5 ~~conduct an assessment of acute care hospitals located~~
6 ~~within the county or acute care hospitals not located~~
7 ~~within the county that serve a significant number of~~
8 ~~county residents for the purpose of designating the~~
9 ~~hospitals pursuant to this section as a high priority,~~
10 ~~medium priority, or low priority "essential community~~
11 ~~facility."~~

12 ~~(2) For purposes of this section, a hospital not located~~
13 ~~within the territory of the assessing county shall be~~
14 ~~deemed to serve a significant number of that county's~~
15 ~~residents if within the previous 12-month period, either~~
16 ~~at least 5 percent of the hospital's emergency department~~
17 ~~visits were residents of the assessing county or at least 5~~

1 percent of the county's emergency ambulance transports
2 were made to that hospital.

3 (b) (1) Any county choosing to conduct an
4 assessment of acute care hospitals under this section shall
5 establish a county essential community facilities
6 committee appointed by the board of supervisors and
7 comprised of the following:

8 (A) Two members nominated by an organization
9 representing a majority of acute care hospitals in the
10 county.

11 (B) Two members nominated by organizations
12 representing registered staff nurses.

13 (C) Two members nominated by organizations
14 representing emergency physicians and surgeons.

15 (D) Three members of the public selected by the chair
16 of the county board of supervisors.

17 (2) One of the public members selected pursuant to
18 subparagraph (D) of paragraph (1) shall be designated
19 by the county board of supervisors as the chair of the
20 committee.

21 (3) The county shall request nominations from those
22 organizations that are most representative of the groups
23 specified in subparagraphs (A) to (D), inclusive.
24 However, if appropriate, the county may split
25 nomination requests between two representative groups.

26 (c) (1) The county essential community facilities
27 committee shall submit a final report and
28 recommendations to the board of supervisors and the
29 department within 120 days following the convening of
30 the committee's first meeting.

31 (2) Prior to submitting the final report and
32 recommendations, the committee shall do all of the
33 following:

34 (A) The committee shall collect information pursuant
35 to this section on each acute care hospital located within
36 the county or acute care hospital not located within the
37 county that serves a significant number of county
38 residents and submit to the board of supervisors and the
39 department a preliminary report and recommendation
40 for designating the hospitals pursuant to this section as a

1 *high priority, medium priority, or low priority “essential*
2 *community facility.”*

3 *(B) Following the collection of information on each*
4 *hospital and the preparation of a preliminary report and*
5 *recommendation on the designation of the hospitals, the*
6 *county essential community facilities committee shall*
7 *conduct a public hearing on its preliminary report and*
8 *recommendation.*

9 *(3) The committee shall confer with the Office of*
10 *Statewide Health Planning and Development (OSHPD)*
11 *to ensure that data is collected from the hospitals and that*
12 *the recommendations for designating hospitals as high,*
13 *medium, or low priority essential community facilities are*
14 *made by the committee as required by this section.*

15 *(d) For purposes of this chapter, an ‘essential*
16 *community facility’ or ‘ECF’ means a facility the*
17 *operation of which is essential to promoting and*
18 *protecting the public health and safety in a county. An*
19 *essential community facility designation shall be based*
20 *upon and include all of the following criteria:*

21 *(1) Each hospital’s geographic isolation, defined as*
22 *follows:*

23 *(A) Hospitals with fewer than six hospitals within a*
24 *10-mile radius shall be considered a high priority for ECF*
25 *designation.*

26 *(B) Hospitals with six to 10 hospitals within a 10-mile*
27 *radius shall be considered a medium priority for ECF*
28 *designation.*

29 *(C) Hospitals with more than 10 hospitals within a*
30 *10-mile radius shall be considered a low priority for ECF*
31 *designation.*

32 *(2) Each hospital’s volume of ambulance transports to*
33 *its emergency department. Each county shall develop its*
34 *own criteria for classification according to this factor.*

35 *(3) Each hospital’s total volume of emergency visits.*
36 *Each county shall develop its own criteria for*
37 *classification according to this factor. Hospitals shall*
38 *include information on the classification of emergency*
39 *room visits as urgent and nonurgent to the extent the*
40 *hospitals collect this data.*

1 (4) Each hospital's status as a paramedic base hospital.
2 Each county shall develop its own criteria for
3 classification according to this factor.

4 (5) Each hospital's status as a designated trauma
5 center. Hospitals with trauma center designation shall be
6 classified as high priority for ECF designation.

7 (6) Each hospital's ability to provide specialty services,
8 including, but not limited to, a burn unit, eating disorders
9 awareness and prevention (EDAP), treatment for
10 mental disorders pursuant to Article 1 (commencing with
11 Section 5150) of Chapter 1 of Part 1 of Division 5 of the
12 Welfare and Institutions Code, a neurosurgery unit, a
13 coronary and pulmonary care, a perinatal unit, a neonatal
14 intensive care unit, obstetrics, and a pediatrics unit,
15 including specialty pediatrics care, services. Each county
16 shall develop its own criterion for classification based
17 upon the availability of specialty care services.

18 (7) Each hospital's use of emergency department
19 ambulance diversion where the diversion is an indicator
20 of increased patient load and is not due to reductions in
21 service.

22 (e) The Office of Statewide Health Planning and
23 Development shall, upon the request of a county or in
24 response to the request of the department after the
25 county's essential community facilities committee has
26 submitted its report to the department, provide
27 comments and additional factors to be considered for
28 those hospital facilities providing services in overlapping
29 jurisdictions.

30 (f) Any hospital receiving a request for information
31 from a county shall respond to the county, within 30
32 business days after receiving the written request for
33 information, as follows:

34 (1) A hospital in the county shall submit data that
35 specifies each month of the 12-month period designated
36 by the committee for review.

37 (2) A hospital that is not in the county shall either
38 submit documentation that the hospital does not serve a
39 significant number of residents of the requesting county

1 or submit data that specifies each month of the 12-month
2 period designated by the committee for review.

3 (g) The county shall file a notice with the department
4 with regard to any hospital that does not comply with this
5 section. The department shall investigate within seven
6 days of receiving notification of noncompliance from the
7 county. If necessary, the department shall cite the
8 hospital for noncompliance with this section.

9 (h) The essential community facilities committee shall
10 review all of the information submitted by the hospitals
11 pursuant to this section and shall designate each hospital
12 as a high, medium, or low priority essential community
13 facility. The committee shall consult with the Office of
14 Statewide Health Planning and Development at any time
15 during the process and shall respond to any comments
16 from the office regarding the ranking of hospitals,
17 peculiar circumstances of a hospital or service area,
18 overlapping jurisdictions, or other factors. Each county
19 shall determine its system of ranking hospitals. Only those
20 hospitals designated as high priority essential community
21 facilities may apply to the county for funding
22 augmentation from the Emergency Department
23 Supplemental Fund pursuant to Section 1302.

24 SEC. 2. Section 1302 is added to the Health and Safety
25 Code, to read:

26 1302. (a) The Emergency Department
27 Supplemental Fund is hereby created in the State
28 Treasury. The California Medical Assistance Commission
29 shall administer the fund. The California Medical
30 Assistance Commission shall expend the funds in the
31 Emergency Department Supplemental Fund for the
32 purposes of this section, upon appropriation by the
33 Legislature.

34 (b) If a hospital declares the intent to close or
35 downgrade its emergency department and the county
36 has designated the hospital facility as a high priority
37 essential community facility pursuant to Section 1301, the
38 hospital may request that the board of supervisors
39 support an application for an augmentation from the
40 Emergency Department Supplemental Fund to increase

1 the hospital's reimbursement under the hospital's
2 Medi-Cal contract.

3 (c) In response to a request by the hospital, the board
4 of supervisors may adopt a resolution that includes the
5 following information:

6 (1) Certification that the hospital is a high priority
7 essential community facility under Section 1301.

8 (2) A citation of the reason for the emergency room
9 downgrade or closure and a preliminary finding of
10 financial hardship.

11 (3) A stipulation that the facility does not intend to
12 close and is willing to comply with the requirements of
13 Section 1301 to pursue an application for funds from the
14 Emergency Department Supplemental Fund.

15 (4) A stipulation that the facility accepts as a condition
16 of receiving funding under the Emergency Department
17 Supplemental Fund, the operation of an emergency
18 department in compliance with this chapter as a
19 condition of licensure.

20 (d) For purposes of this section, 'financial hardship'
21 includes, but is not limited to, a situation in which a
22 hospital that has an operating margin of less than 5
23 percent uncompensated, undercompensated, or both
24 emergency department visit costs that have increased
25 over the past two years and any other financial condition
26 that demonstrates financial hardship related to operating
27 a hospital.

28 (e) Before approving an application for funding from
29 the Emergency Department Supplemental Fund for a
30 hospital that has received the support of the board of
31 supervisors of the county in which the hospital is located,
32 the California Medical Assistance Commission shall
33 require the following information from the hospital:

34 (1) Proof of the support of the board of supervisors.

35 (2) An explanation, including financial factors, of the
36 hospital's emergency department losses. The hospital
37 shall submit copies of the hospital's prior year's audits and
38 other financial documents to be determined by the
39 California Medical Assistance Commission that are
40 necessary to determine financial hardship and confirm

1 *that the emergency department is not closing due to*
2 *financial mismanagement. Any documents that are not*
3 *required to be submitted to other state agencies shall be*
4 *confidential.*

5 (3) *If the hospital belongs to a health care system, the*
6 *hospital shall show that the closure or downgrade of the*
7 *emergency department is not due to consolidation of*
8 *services within the parent corporation.*

9 (4) *The agreement of the hospital to comply with a*
10 *requirement to operate an emergency department as a*
11 *condition of licensure in order to receive funds under this*
12 *section.*

13 (f) *After reviewing a hospital's application for funding*
14 *from the Emergency Department Supplemental Fund,*
15 *the California Medical Assistance Commission shall make*
16 *the following findings and determinations before*
17 *approving an application:*

18 (1) *Find that the hospital's emergency department*
19 *downgrade or closure is in fact due to financial hardship*
20 *that can be reversed with a supplemental funding*
21 *augmentation.*

22 (2) *Find that the hospital has agreed in writing that*
23 *upon receiving an adequate supplemental funding rate*
24 *under terms, including payment schedules, to which the*
25 *commission and the hospital agree, the hospital shall*
26 *provide emergency department services as a condition of*
27 *licensure.*

28 (3) *Determine the contract-funding amount for the*
29 *hospital from the Emergency Department Supplemental*
30 *Fund.*

31 (g) *If a hospital is later found to not have supplied*
32 *accurate financial data or closes the emergency*
33 *department without notification to the department or*
34 *the California Medical Assistance Commission, all*
35 *moneys received by the hospital from the Emergency*
36 *Department Supplemental Fund shall be returned to the*
37 *state, federal, or both governments.*

38 (h) *The California Medical Assistance Commission*
39 *shall develop any rules or regulations necessary to*
40 *implement this section.*

1 Code is amended to read:

2 1300. ~~(a) Any licensee or holder of a special permit~~
3 ~~may, with the approval of the state department,~~
4 ~~surrender his or her license or special permit for~~
5 ~~suspension or cancellation by the state department. Any~~
6 ~~license or special permit suspended or canceled pursuant~~
7 ~~to this section may be reinstated by the state department~~
8 ~~on receipt of an application showing compliance with the~~
9 ~~requirements of Section 1265.~~

10 ~~(b) Before approving a downgrade or closure of~~
11 ~~emergency services pursuant to subdivision (a), the state~~
12 ~~department shall receive a copy of the impact evaluation~~
13 ~~of the county to determine impacts, including, but not~~
14 ~~limited to, an impact evaluation of the downgrade or~~
15 ~~closure upon the community, including community~~
16 ~~access to emergency care, and how that downgrade or~~
17 ~~closure will affect emergency services provided by other~~
18 ~~entities. Development of the impact evaluation shall~~
19 ~~incorporate at least one public hearing. The county in~~
20 ~~which the proposed downgrade or closure will occur shall~~
21 ~~ensure the completion of the impact evaluation, and shall~~
22 ~~notify the department of results of an impact evaluation~~
23 ~~within three days of the completion of that evaluation.~~
24 ~~The county may designate the local emergency medical~~
25 ~~services agency as the appropriate agency to conduct the~~
26 ~~impact evaluation. The impact evaluation and hearing~~
27 ~~shall be completed within 60 days of the county receiving~~
28 ~~notification of intent to downgrade or close emergency~~
29 ~~services. The county or designated local emergency~~
30 ~~medical services agency shall ensure that all hospital and~~
31 ~~prehospital health care providers in the geographic area~~
32 ~~impacted by the service closure or change are consulted~~
33 ~~with, and local emergency service agencies and planning~~
34 ~~or zoning authorities are notified, prior to completing an~~
35 ~~impact evaluation as required in this section. This~~
36 ~~subdivision shall be implemented on and after the date~~
37 ~~that the county in which the proposed downgrade or~~
38 ~~closure will occur, or its designated local emergency~~
39 ~~medical services agency, has developed a policy~~

1 specifying the criteria it will consider in conducting an
2 impact evaluation, as required by this subdivision.

3 (e) (1) Notwithstanding subdivision (a), if the county
4 or its designated local emergency services agency
5 concludes that a downgrade to standby emergency
6 medical services, or the closure of an emergency service,
7 would not be in the best interest of the general public, and
8 includes this conclusion in its impact evaluation, the
9 department shall not approve a special permit for a
10 standby emergency medical service, or shall not permit
11 the closure of the emergency service. However, if the
12 county or its designated local emergency services agency
13 determines that a downgrade or closure would not be in
14 the best interest of the general public, a hospital may
15 appeal to the Secretary of the California Health and
16 Human Services Agency to overturn the determination.
17 The appeal shall be submitted, reviewed, and decided
18 upon in accordance with procedures and timelines
19 recommended by the Licensing and Certification
20 Division of the department.

21 (2) Paragraph (1) shall not apply to a facility or unit
22 within a facility that is subject to closure by the
23 department pursuant to subparagraph (B) of paragraph
24 (2) of subdivision (c) of Section 1280 or if the department
25 makes a finding that the denial of a permit under this
26 section would imperil the financial stability of the hospital
27 corporation.

28 (3) This subdivision shall not apply to general acute
29 care hospitals located in rural areas as defined in Section
30 70059.1 of Title 22 of the California Code of Regulations.

31 (d) The Emergency Medical Services Authority shall
32 develop guidelines for development of impact evaluation
33 policies. On or before June 30, 1999, each county or its
34 designated local emergency medical services agency
35 shall develop a policy specifying the criteria it will
36 consider in conducting an impact evaluation pursuant to
37 subdivision (b). The policy shall include an evaluation of
38 the economic impact on the owner of the facility of
39 keeping the emergency room open or not downgrading
40 it to standby status. Each county or its designated local

~~emergency medical services agency shall submit its
impact evaluation policy to the department and the
Emergency Medical Services Authority within three days
of completion of the policy. The Emergency Medical
Services Authority shall provide technical assistance
upon request to a county or its designated local
emergency medical services agency.~~

~~SEC. 2. No reimbursement is required by this act
pursuant to Section 6 of Article XIII B of the California
Constitution because the only costs that may be incurred
by a local agency or school district will be incurred
because this act creates a new crime or infraction,
eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section
17556 of the Government Code, or changes the definition
of a crime within the meaning of Section 6 of Article
XIII B of the California Constitution.~~

